CLERK'S COPY

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1937

No. 36

JOSEPH K. WILLING, RECEIVER OF COMMERCIAL NATIONAL BANK, PHILADELPHIA, PENNSYLVANIA, PETITIONER,

vs.

ISRAEL BINENSTOCK, INDIVIDUALLY AND AS SURVIVING PARTNER OF THE PARTNERSHIP FIRM OF SWINGER AND BINENSTOCK, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 28, 1937.

CERTIORARI GRANTED MAY 24, 1937.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No. 36

JOSEPH K. WILLING, RECEIVER OF COMMERCIAL NATIONAL BANK, PHILADELPHIA, PENNSYLVANIA, PETITIONER,

vs.

ISRAEL BINENSTOCK, INDIVIDUALLY AND AS SURVIVING PARTNER OF THE PARTNERSHIP FIRM OF SWINGER AND BINENSTOCK, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

INDEX

	Original	Print
Record from D. C. U. S., Eastern Pennsylvania	1	1
Docket entries	1	1
Bill of complaint	3	2
Exhibit "A"—Promissory note, January 9, 1933	7	5
"B"—Promissory note, February 28, 1933	8	5
"C"—Promissory note, May 1, 1933	8	6
"D"—Promissory note, January 25, 1933	9	6
Stipulation as to answer	9	7
Answer by way of preliminary objection	10	7
Opinion sur motion to dismiss, Kirkpatrick, J.	11	8
Stipulation as to answer	14	11
Answer	15	11
Stipulation re admissions	17	13
Final decree	17	13
Exception to decree	19	14
Assignments of error	20	15
Petition for appeal	22	16
Order allowing appeal	22	17
Præcipe for record	23	17
Clerk's certificate (omitted in printing)	24	
Proceedings in U. S. C. C. A., Third Circuit	25	18
Minute entry of hearing	25	18
Opinion, per curiam	26	18
Judgment	28	19
Clerk's certificate (omitted in printing)	29	
Order allowing certiorari	30	20

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JUNE 14, 1937.

—9146-C

[fol. 1]

IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ISRAEL BINENSTOCK, Ind. and as Surviving Partner of the Partnership Firm of Swinger and Binenstock and Bessie Swinger, Ind. and as Executrix of the Estate of Benjamin Swinger, Deceased,

vs.

JOSEPH K. WILLING, Receiver of the Commercial National Bank

Isadore Katz, Esq.
R. T. McCracken, Esq.
T. J. Minnick, Esq.

DOCKET ENTRIES

7/12/35. Bill of Complaint filed.
7/12/35. Subpœna entered, returnable August 1, 1935.
8/14/35. Subpœna returned, "on July 12, 1935 served" and filed.
8/28/35. Stipulation of counsel waiving time limit in which to file answer, etc., filed.
8/28/35. Answer by way of preliminary objections to Bill of Complaint filed.
2/17/36. Argued sur motion to dismiss bill.
3/23/36. Opinion Kirkpatrick, J. denying motion to dismiss Bill of Complaint filed.

[fol. 2]

4/11/36. Stipulation of counsel extending time in which to file answer, filed.
4/11/36. Answer filed.
6/ 9/36. Stipulation of counsel as to admission of certain paragraphs of Bill filed.
6/ 9/36. Final decree in favor of plaintiff with costs, filed.
6/15/36. Exceptions of Defendant and order of Court allowing same, filed.
6/15/36. Petition for appeal and Order of Court allowing Appeal, filed.
6/15/36. Assignments of error, filed.
6/15/36. Præcipe for transcript of Record sur Appeal, filed.
6/15/36. Citation allowed and issued.
6/15/36. Copy of Notice of Appeal filed.
6/23/36. Citation returned—service accepted and filed.

[fol. 3] IN UNITED STATES DISTRICT COURT

[Title omitted]

BILL OF COMPLAINT—Filed July 12, 1935

To the Honorable the Judges of said Court:

Your orators complain and say:

1. On and prior to February 28th, 1933, the plaintiff, Israel Binenstock and Benjamin Swinger were engaged as partners under a verbal agreement in the wholesale grocery business in the City of Philadelphia, Pennsylvania, trading as Swinger & Binenstock. On February 28th, 1933, Benjamin Swinger died, and the said partnership business was continued by Israel Binenstock and Bessie Swinger, the widow of the said Benjamin Swinger.

2. The said Benjamin Swinger by his last will and testament appointed his wife, Bessie Swinger, to be the executrix of his estate and letters testamentary were issued to the said Bessie Swinger by the Register of Wills of Philadelphia County on April 26, 1933. The will of the said Benjamin Swinger is recorded in the office of the Register of Wills of Philadelphia County in Will Book No. 581 page 228. Under said will said Bessie Swinger is the sole beneficiary of the estate of the said Benjamin Swinger, deceased.

3. The Commercial National Bank is a national bank duly organized and existing under the National Banking Act of the United States of America, and on and prior to February 28, 1933, was engaged in the business of a national bank at Philadelphia, Pennsylvania.

4. On March 1, 1933, but as of the close of business on February 28, 1933, the Comptroller of the Currency of the [fol. 4] United States assumed control of the business and assets of the said Commercial National Bank. On March 14, 1933, the Comptroller of Currency appointed a conservator for the said Commercial National Bank, and on May 22, 1934, appointed John J. Sullivan receiver, and on June 22nd, 1934 appointed the defendant, Joseph K. Willing, as receiver of said Commercial National Bank.

5. On February 28th, 1933, and at all times, subsequent thereto, the said Commercial National Bank was and now is insolvent.

6. This is an action in equity arising under the laws of the United States.

7. Under date of January 9th, 1933, the said partnership firm of Swinger & Binenstock executed and delivered to the said Commercial National Bank its promissory note in the amount of $10,000.00 and under date of February 28th, 1933, executed and delivered to said Commercial National Bank its further promissory note in the amount of $10,000.00. Copies of the two promissory notes are hereto attached, made a part hereof and marked "Exhibit A" and "Exhibit B". Under date of May 1st, 1933, while the said Commercial National Bank was operating upon a restricted basis the said firm of Swinger and Binenstock as then constituted delivered its promissory note in the amount of $2,604.10 to replace a previous note given to guarantee certain notes of Satz Grocery Company. Said note of $2,604.10 has been paid in full but the complainants are informed the books of defendant show a balance of $37.98 due thereon which complainants admit and aver for the purposes of this case. A copy of said note is hereto attached, made a part [fol. 5] hereof, and marked "Exhibit C". Under date of January 25th, 1933, one, Luciano Cammarota executed and delivered to the partnership firm of Swinger & Binenstock his promissory note in the amount of $300 which note was endorsed and discounted at the said Commercial National Bank. Said note is overdue and has not been paid. A copy thereof is hereto attached, made a part hereof, and marked "Exhibit D". All of said notes were and now are held by said Commercial Bank and the respondent.

8. At the close of business on February 28th, 1933, the said Benjamin Swinger had upon deposit in the said Commercial National Bank the sum of $1,546.58, and the said Israel Binenstock had upon deposit in said bank the sum of $32,323.76. The said partnership firm of Swinger and Binenstock, as of the close of business on February 28th, 1933, had upon deposit in said Commercial National Bank the sum of $5,822.52.

9. The respondent has reduced the indebtedness of the partnership firm of Swinger & Binenstock to the said bank by allowing an off-set of the deposit standing in the name of Swinger & Binenstock in the amount of $5,822.52.